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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,164	03/02/2004	Eiji Kato	FY.51039US1A	3401

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EXAMINER

PHAN, HAU VAN

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,164

Applicant(s)

KATO ET AL.

Examiner

Hau V Phan

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/2/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 3/2/2004 has been considered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-4, 6-12, 15-21 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Nakamura et al. (6,695,083).**

Nakamura et al. in figures 1-13, disclose an off-road vehicle comprising a frame, a plurality of wheels (25, 26) arranged to support the frame, an internal combustion engine (27) powering at least one of the wheels, and an air intake system having intake duct (44) arranged to supply air to the engine. The intake duct includes an upper portion, which is at a location higher than an uppermost surface of the wheels. The air intake system has an air inlet through (67), which ambient air enters the intake system. The air inlet positioned higher than the wheels, and the air intake duct extending

rearward to the engine, at least a portion of the air intake duct being positioned lower than the uppermost surface of the wheels.

Regarding claim 2, Nakamura et al. disclose a hood configured to cover at least a front portion of the frame. The air inlet disposed below the hood.

The off-road vehicle as set forth in Claim 1, wherein the air intake system comprises an air cleaner configured to clean the air entering through the air inlet.

Regarding claim 3, Nakamura et al. disclose at least a portion of the air cleaner, which is positioned below the hood.

Regarding claim 4, Nakamura et al. disclose at least two seat assemblies disposed side by side on the frame. The air inlet positioned between the seat assemblies in a top plan view of the vehicle.

Regarding claim 6, Nakamura et al. disclose an off-road vehicle comprising a frame, a plurality of wheels arranged to support the frame, a hood configured to cover at least a first portion of the frame, an internal combustion engine (27) powering at least one of the wheels, and an air intake system arranged to supply air to the engine. The air intake system comprises an air cleaner (41) configured to clean the air. The air cleaner disposed below a central portion of the hood.

Regarding claim 7, Nakamura et al. disclose the engine, which is disposed on a second portion of the frame. The second portion is spaced apart from the first portion. The air intake system additionally comprises an air delivery conduit arranged to deliver the air from the air cleaner to the engine.

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Regarding claim 8, Nakamura et al. disclose the engine having an air intake port communicating with a combustion chamber of the engine and the air delivery conduit connects the air cleaner to the air intake port.

Regarding claim 9, Nakamura et al. disclose the air delivery conduit comprising a throttle body that has a throttle valve to regulate an amount of air passing to the combustion.

Regarding claim 10, Nakamura et al. disclose the air delivery conduit including an accumulator disposed between the throttle body and the balance of the intake duct, an inner diameter of the accumulator is greater than an inner diameter of the rest of the delivery conduit.

Regarding claim 11, Nakamura et al. disclose a third portion of the frame extending between the first and second portions. The third portion includes a floorboard, at least a portion of the air delivery conduit extending below the floorboard.

Regarding claim 12, Nakamura et al. disclose a seat unit disposed on the second portion of the frame. The engine and the seat unit positioned next to each other.

Regarding claim 15, Nakamura et al. disclose at least a portion of the air delivery conduit, which is positioned higher than the air cleaner portion.

Regarding claim 16, Nakamura et al. disclose at least a portion of the air cleaner that is positioned higher than the wheels.

Regarding claim 17, Nakamura et al. disclose at least a portion of the air cleaner that is positioned higher than the wheels.

Regarding claim 18, Nakamura et al. disclose a seat unit (33) that defines a surface onto which a driver or passenger of the vehicle sits. The surface positioned higher than the wheels, and at least a portion of the air cleaner is positioned higher than the surface.

Regarding claim 19, Nakamura et al. disclose the air cleaner having an air inlet and at least the air inlet is positioned higher than the surface.

Regarding claim 20, Nakamura et al. disclose the air cleaner having an air inlet and at least the air inlet is positioned higher than the wheels.

Regarding claim 21, Nakamura et al. disclose the hood additionally covers at least one of the wheels.

Regarding claim 31, Nakamura et al. disclose an off-road vehicle comprising a frame, a plurality of wheels arranged to support the frame, at least one seat supported by the frame, an internal combustion engine (27) powering at least one of the wheels, and an air intake system arranged to supply air to the engine. The air intake system comprises an air cleaner configured to filter the air. The seat being disposed in a fore to aft direction on the vehicle such that the air cleaner lies forward of the seat and at least a portion of the engine lies to the rear of the seat.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5, 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (6,695,083) as applied to claims 1, 12 above, and further in view of Hamm (6,582,004).

Nakamura et al. disclose an off-road vehicle comprising an internal combustion engine (27) powering at least one of the wheels, and an air intake system arranged to supply air to the engine. The air intake system comprises an air cleaner (41) configured to clean the air. Nakamura et al. fail to show at least two seat assemblies.

Hamm in figure 1, teaches an off-road vehicle comprising a frame, a plurality of wheels (14, 16) arranged to support the frame, at least two seat assemblies (22) disposed side by side on the frame. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the off-road vehicle of Nakamura et al. with the substitution of the off-road vehicle having at least two seat assemblies as taught by Hamm in order to carry additional person on the vehicle.

6. Claims 22-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (6,695,083) in view of Hamm (6,582,004).

Nakamura et al. disclose an off-road vehicle comprising an internal combustion engine (27) powering at least one of the wheels, and an air intake system arranged to supply air to the engine. The air intake system comprises an air cleaner (41) configured to clean the air. Nakamura et al. fail to show at least two seat assemblies.

Hamm in figure 1, teaches an off-road vehicle comprising a frame, a plurality of wheels (14, 16) arranged to support the frame, at least two seat assemblies (22)

disposed side by side on the frame. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the off-road vehicle of Nakamura et al. with the substitution of the off-road vehicle having at least two seat assemblies as taught by Hamm in order to carry additional person on the vehicle.

Regarding claim 23, Nakamura et al. disclose at least a portion of the engine with addition of the seat assemblies from Hamm, which is positioned between the seat assemblies.

Regarding claim 24, Nakamura et al. disclose the engine having an air intake port communicating with a combustion chamber of the engine. The air intake system additionally comprises an air delivery conduit arranged to connect the air cleaner to the air intake port.

Regarding claim 25, Nakamura et al. disclose the air delivery conduit comprising a throttle body that has a throttle valve to regulate an amount of air passing to the combustion chamber.

Regarding claim 26, Nakamura et al. disclose at least a portion of the air delivery conduit, which is positioned between the seat assemblies.

Regarding claim 27, Nakamura et al. disclose at least a portion of the air intake port, which is positioned forward of a seat back of each of the respective seat assemblies.

Regarding claim 28, Nakamura et al. disclose at least a portion of the air cleaner, which is positioned higher than the wheels.

Regarding claim 29, Nakamura et al. disclose each one of the seat assemblies defines a surface onto which a driver or passenger of the vehicle sits. The top surface is positioned higher the wheels, and at least a portion of the air cleaner is positioned higher than the surface.

Regarding claim 30, Nakamura et al. disclose the air cleaner having an air inlet and at least the air inlet is positioned higher than the surface.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shibata et al. disclose a cooling apparatus for vehicle engine, Mather et al. disclose an engine cooling system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 703-308-2084. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christ Ellis can be reached on 703-308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hau V Phan
Examiner
Art Unit 3618

Hauphan
1/15/05

**HAU PHAN
PATENT EXAMINER**